MARY A. VAN ALEN

IBLA 71-297 Decided October 27, 1972

Appeal from a decision of the Area Manager, Folsom, California, District Office, Bureau of Land Management, denying application for range improvement permit and cancelling a permit previously issued.

Affirmed.

Act of July 9, 1965: Federal Water Project Recreation Act--Grazing and Grazing Lands--Grazing Leases: Generally

> Range improvement permits, issued pursuant to sec. 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(m) (1970), may be cancelled where the improvement would interfere with the range management practices determined by the Bureau of Land Management; where a management plan of the Bureau, developed for a project authorized under the Federal Water Project Recreation Act of July 9, 1965, 16 U.S.C. § 460 1-12, et seq. (1970), designates an area of public lands as a "roadless zone" for purposes of wildlife and recreational uses, it is proper for the Bureau to cancel an existing range improvement permit and deny an application for a similar permit which calls for the construction of roads in such zoned areas.

Words and Phrases

> "Range management practices." The term "range management practices" encompasses multiple use considerations, including recreation and wildlife.

APPEARANCES: Mary A. Van Alen, pro se.

OPINION BY MR. FISHMAN

Mary A. Van Alen has filed an appeal from a decision of the Area Manager, Folsom, California, District Office, Bureau of Land Management, dated July 24, 1970. The decision denied an application submitted by the appellant for a range improvement permit and cancelled a permit previously issued to the appellant. Appellant is the owner of a grazing lease issued to her under section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(m)

(1970). The land embraced within the leasehold covers over 1,300 acres and is located in Madera County, California, along the San Joaquin River. Appellant was issued a range improvement permit on January 19, 1966, to construct a truck access road on lands embraced within the leasehold. On December 28, 1966, she applied for another permit to construct another road.

As noted on the applications for range improvement permits, the issuance of a permit is made subject to certain conditions. One of those conditions listed on the application forms states in pertinent part:

> 7. The permit is subject to cancellation * * * where the improvement would interfere with the range management practices determined by the Bureau of Land Management * * *.

The item "range management practices" encompasses multiple use considerations, e.g. recreation and wildlife; cf. 43 CFR 4122.1-1 (1972).

Pursuant to the Federal Water Project Recreation Act of July 9, 1965, 16 U.S.C. §§ 460(1)(2), et seq. (1970), the Bureau of Land Management and the Bureau of Reclamation entered into an agreement for the development and administration of certain lands along the San Joaquin River, referred to as the "Squaw Leap" area, "for the primary purpose of wildlife development." The land leased by the appellant lies within the Squaw Leap wildlife management area. An approved plan, developed by the Bureau of Land Management to manage the land, designates the area involved in the permit and application for a permit as "roadless zones."

As a result of this designation, we perceive no reason to disturb the decision below. In her statement of reasons on appeal, appellant asserts that "the actual use for the last hundred years (of the land in question) has been grazing." She submits several reasons to support her position that proper range management requires the mechanized roads which she desires to construct and retain in the furtherance of her grazing activities. However, the uses of the public lands in question have been expanded to include wildlife and recreational uses as well as grazing. One of the principal objectives of the Taylor Grazing Act is "to promote the highest use of the public lands pending its final disposal * * *." 43 U.S.C. § 315 (1970). The action taken by the Area Manager of the Folsom District Office in cancelling the appellant's existing range improvement permit, and denying her application for another permit was both consistent with, and in furtherance of, this objective and also consonant with the multiple use goals.

Appellant also asserts that approximately 280 acres of land which she and others own in fee would be landlocked if the decision below is sustained. Appellant has neither identified the acreage to which she refers, nor specified in what manner the outcome of the decision below would cause her property to be landlocked. In any event, it is apparent from the record that the land appellant owns, which is adjacent to the public land embraced within her leasehold, would not be landlocked by our affirming the decision below.

Appellant next argues that the absence of roads in the area constitutes a fire hazard because of the inaccessibility to the area of fire fighting equipment. Even if it were assumed that the lack of roads in the area constituted a fire hazard, the record discloses that initial attack on a fire in the area would be by the California Division of Forestry through the use of aircraft, followed by ground crews either across existing roads through land owned by the appellant, or by way of the "Squaw Leap Trail," which is maintained by the Bureau of Land Management. In addition, if vehicle access roads were required to fight a fire, in certain circumstances they could be constructed during the course of the control action wherever they are needed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

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Frederick Fishman, Member

I concur:

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Joan B. Thompson, Member

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Anne Poindexter Lewis, Member, Dissenting in Part

MEMBER LEWIS DISSENTING IN PART

I concur in the conclusion and supporting rationale that appellant may not be awarded an improvement permit to build a new road into the land now covered by her grazing lease. However, I disagree that the permit covering the existing road should be cancelled while her grazing lease is outstanding.

Under the decision below, as affirmed herein, it appears that the Government can close or remove her existing road, which appellant constructed and which was covered by the existing permit. The permit was presumably granted to promote better range management. I believe that reason is still valid. Further, as the road has already been built and is covered by the existing permit and as it predates the designation of the land as a wild life management area, appellant should be permitted to have the existing road while her grazing lease is in effect. This conclusion would seem to balance the rights of the lessee with those of the government both as lessor and as manager of a wildlife area.